IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

Crl.MC.No. 2123 of 2006()

CC.604/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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PETITIONER: ACCUSED

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1. M/S.KARNATAKA SOAPS & DETERGENTS LTD.,
   REGISTERED OFFICE AT PUNE HIGHWAY,
   POST BOX NO.5531, BANGALORE-565 055,
   REP. BY MR.S.RAVI, SALES MANAGER,
   M/S.KARNATAKA SOAPS & DETERGENTS LTD.,
   AREA OFFICE, KOCHI.

2. MR.VASANTHA KUMAR,
   REGIONAL MANAGER, M/S.KARNAKATA SOAPS & DETERGENTS
   LTD., SEVEN STAR BUILDING, IIND FLOOR,
   A-80, ANNA NAGAR, CHENNAI-600 102.

3. MR.KESAVAN NAIR, AREA SALES MANAGER,
   AREA OFFICE, M/S.KARNATAKA SOAPS & DETERGENTS LTD.
   28/1010, PAZHAMPALLY BUILDINGS, CHITTOOR ROAD,
   VADUTHALA, KOCHI-682 023.

4. MR.M.K.PADMANABHAN,
   SALES SUPERVISOR, M/S.KARNATAKA SOAPS & DETERGENTS
   LTD., KOCHI AREA OFFICE, RESIDING IN SKANDAVILAS,
   ERANHOLI, THALASSERY-7.

BY ADV. SRI.P.JACOB VARGHESE
SRI.V.MANOJ KUMAR
SRI.VIVEK VARGHESE P.J.

RESPONDENTS: COMPLAINANTS

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1. MR.PUNATHIL NAVAS,
   PROPRIETOR, M/S.N.N.BROTHERS,
   BELLAR ROAD, KANNUR-670 001.

2. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
ADV. SRI.C.K.SREEJITH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.2123 OF 2006

Dated this the 14th day of December, 2006.

ORDER

The petitioners are accused in a prosecution launched against them by the respondent/complaint. The respondent/complainant had business transactions with the 1st petitioner/accused company. The 1st petitioner/accused company has initiated steps for prosecution of the respondent under Section 138 of the N.I Act before the court at Chennai. Thereafter the 1st respondent has filed the present complaint making allegations against the petitioners herein, inter alia, under Section 406, 420 & 471 I.P.C. The crux of the allegations raised by the respondent/complainant in the complaint is that the 1st petitioner company and its officials had induced the petitioners to hand over a blank signed cheque as security when they entered into the business transaction. It is the case of the respondent/complainant that such cheque was given and received on the specific understanding and in good faith that it will not be misused and it shall be kept only as security. Fanciful entries have been made in such cheque and the same has been misutilised to vex and harass the respondent/complainant by initiating prosecution before the court at Chennai.

2. The learned Magistrate after following the procedure prescribed under the Code of Criminal Procedure, has taken cognizance of the offences alleged against the petitioners and the case is now pending before the Court at Kannur, where the transaction was allegedly entered into and blank signed cheque was handed over. One of the accused/petitioners has entered appearance before the learned Magistrate. The others have not entered appearance so far. The petitioners have now come before this Court with a prayer that the powers under Section 482 Cr.P.C may be invoked in their favour to quash the complaint.

3. The learned counsel for the petitioners submits that the complaint is liable to be quashed by invoking the powers under Section 482 Cr.P.C for the first reason that the complaint is totally false and for the second reason that the complaint is lodged with the transparent intention of vexing and harassing the petitioners. For these reasons, it is prayed that the complaint may be quashed.

4. I shall carefully avoid detailed reference to facts and any expression of opinion on the acceptability of the allegations in either of the two cases. Suffice it to say that I do not find any sufficient, satisfactory or compelling reasons which should

persuade this Court to invoke the powers under Section 482 Cr.P.C. It is by now trite that the disputed questions of fact cannot be resolved in proceedings under Section 482 Cr.P.C. The rival contestants have raised conflicting claims before different fora about the circumstances under which the cheque travelled from the possession of the complainant to the possession of the petitioners. Accepting the contentions of either at this stage, relief cannot be granted to either of the contestants. The petitioners' prayer for quashing the proceedings on the ground that the allegations are false, cannot in these circumstances succeed.

5. It is then contended that the allegations are raised belatedly and as a counter blast against the 138 prosecution initiated by the petitioners before the court at Chennai. The mere fact that there was delay in filing the complaint cannot certainly justify a conclusion that the allegations are false or are raised with objectionable motives and vexatious intent. It would be premature and presumptuous on the part of this Court at this stage to come to any specific or authentic conclusion on that aspect. Suffice it to say that I am satisfied that the powers under Section 482 Cr.P.C do not deserve to be invoked.

6. A person against whom criminal adjudicatory process is initiated without justifiable reason can certainly request for premature termination of proceedings initiated against him. In that view of the matter, the petitioners can certainly claim discharge under Section 245(1) or 245(2) Cr.P.C. The powers under Section 482 Cr.P.C are to be invoked sparingly and in an exceptional case in aid of justice - to prevent the failure and miscarriage of justice. In the facts and circumstances of this case, I am not persuaded to agree that such powers deserve to be invoked in favour of the petitioners at this stage of the proceedings.

7. In the result, this Crl.M.C is, dismissed. But I may hasten to observe that the petitioners shall certainly be entitled to claim premature termination of proceedings initiated against them by invoking the powers of the learned Magistrate under Section 245(2) or 245(1) Cr.P.C.

R.BASANT
JUDGE

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